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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/903,215	07/11/2001	Sergio Diaz De Leon	PG16044P0181US	9964

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EXAMINER
GUARRIELLO, JOHN J

ART UNIT	PAPER NUMBER
1771	

DATE MAILED: 09/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/903,215	DE LEON ET AL.	
	Examiner	Art Unit	
	John J. Guarriello	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____ .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-30 is/are pending in the application.

4a) Of the above claim(s) 1-11 and 25-30 is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 12-24 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2/2002 .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☒ Other: *change of address,9/03* .

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-11, 25, drawn to non-woven fabric, classified in class 442, subclass 408.

II. Claims 12-24, drawn to method of making a multicomponent non-woven fabric, classified in class 28, subclass 105.

III. Claims 26-30, drawn to disposable absorbent article, classified in class 604, subclass 385.1.

2. Inventions I and III are related as mutually exclusive species in an intermediate-final product relationship. Distinctness is proven for claims in this relationship if the intermediate product is useful to make other than the final product (MPEP § 806.04(b), 3rd paragraph), and the species are patentably distinct (MPEP § 806.04(h)). In the instant case, the intermediate product I, is deemed to be useful as filtering material and the inventions are deemed patentably distinct since there is nothing on this record to show them to be obvious variants. Should applicant traverse on the ground that the species are not patentably distinct, applicant should

submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions anticipated by the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

3. Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by a materially different process such as pattern bonding, through air bonding, or ultrasonic bonding.

4. Inventions II and III are different because the method of II is not required to make the absorbent article of III.

5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

6. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

7. During a telephone conversation with Stephen Geimer on 4/29/2003 a provisional election was made with traverse to prosecute the invention of Group II, claims 12-24. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-12, 25, Group I, and Group III, claims 26-30, are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 112

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 13-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 13, line 2, it is not clear what the correct antecedent basis is since this claim 13 is directed to a method of making and is dependent upon the **article** claim 8.

In claim 14, line 2, it is not clear what the correct antecedent basis is, since this claim 14 is directed to a method of making and is dependent upon the **article** claim 9.

In claim 15, line 2, it is not clear what the correct antecedent basis is, since claim 15 is directed to a method of making and is dependent upon the **article** claim 9.

In claim 16, it is not clear what the phrase "in said third fibrous layer of said precursor web " refers. This is indefinite.

In claim 17, line 2, it is not clear what the correct antecedent basis is, since claim 17 is directed to a method of making and is dependent upon the **article** claim 9.

In claim 18, line 2, it is not clear what the correct antecedent basis is, since claim 18 is directed to a method of making and is dependent upon the **article** claim 8.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

11. Claims 12, 19-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Welchel et al. 6,022,818 in view of Evans 3,485,706 and Putman et al. 6,321,425.

Welchel et al. describes entangled non-woven composite made from absorbent fibers such as wood pulp fibers and matrix fibers, (see abstract). Welchel describes the composite is made into a fluid intake region (corresp.onding to the claimed liquid acceptance layer), a fluid retention region (corresponding to the claimed liquid retention layer), and a fluid transfer region (corresponding to the claimed liquid distribution layer, (column 5, lines 11-15), which components correspond to the claimed liquid acceptance layer, liquid distribution layer and the liquid retention layer of the claimed fabric, as exemplified by claim 22 of the claimed invention. Welchel describes the composite is formed by hydroentangling the at least two fiber sources,(column 2, lines 34-39). Welchel describes the fibers

can be wood pulp fibers (corresponding to the claimed cellulose), polymers can be rayon, polyolefins, and polyesters, (column 2, lines 46-53). Welchel describes the composite may have an additional layer, (column 3, lines 43-48). Welchel describes a superabsorbent can be added, (column 3, lines 36-38; column 9, lines 40-56). Welchel describes the hydroentangling of the layers upon a foraminous entangling surface, (column 8, lines 4-52) and as noted in Evans, 3,485,706. Welchel differs from the claimed invention because it is silent about the basis weight and the image transfer device.

Putnam describes a process for hydroentangling polymeric filaments, (see abstract). Putnam describes an image transfer device with a fabric forming surface, (column 2, lines 36-60). Putnam describes the process step for making diaper facing layers which exhibit softness, (column 5, lines 8-34).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify process of Welchel with the image transfer device step of Putman motivated with the expectation that properties of softness, see Putnam, column 5, lines 22-30, in the article produced by the method would be improved. Futhermore , regarding the

basis weight of the layers this would be within the skill of one of ordinary skill in the art to optimize since basic components of the layers of the multi-component fabric are describes by Welchel.

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Skoog et al 6,550,115 describes a fabric with three zones by hydraulically entangled composite fabric, see abstract; column 3, lines 30-64; column 4, lines 24-65.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John J. Guarriello whose telephone number is 703-308-3209. The examiner can normally be reached on Monday to Friday from 8 am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached on (703) 308-2414. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

TERREL MORRIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700